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COURT OF APPEALS
DIVISION II

No. 41536-4

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**IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON
BY  DEPUTY

PATRICE CLINTON and RYANSCREST TRUST,

Appellants

v.

MARGUERITE NICKLESS, et al.,

Defendants,

and

DEUTSCHE BANK NATIONAL TRUST,

Respondent.

**BRIEF OF RESPONDENT
DEUTSCHE BANK NATIONAL TRUST**

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I. INTRODUCTION

This action arises out of a Complaint filed by Plaintiffs/Appellants Patrice Clinton and Ryanscrest Trust (collectively “Clinton” unless otherwise stated) seeking rescission of Patrice Clinton’s purchase of real property in Gig Harbor from Defendant Marguerite Nickless (“Nickless”) on grounds that the property had not been subdivided in accordance with “Pierce County Code” and RCW 58.17.300. CP 1-3. As alleged in the Complaint, Defendant/Respondent Deutsche Bank National Trust¹ (hereinafter “the Bank”) has an interest in the real property at issue in this litigation. CP 1-2.

During the course of the action, Clinton filed bankruptcy petitions—both on behalf of Ms. Clinton and the Ryanscrest Trust—in the U.S. Bankruptcy Court for the Western District of Washington. In addition, the U.S. Trustee filed an adversary case against Ms. Clinton with respect to the property at issue in the Complaint. The U.S. Trustee alleged, *inter alia*, that Ms. Clinton had engaged in fraudulent conduct with respect to the treatment of the subject property. CP 54-63.

¹ As evidenced by the Public Records filed in this matter, specifically, the Deed of Trust and Assignments thereof, the correct identity of the interested party is Deutsche Bank National Trust Company, as trustee for Trustee in trust for the benefit of the Certificateholders for Ameriquest Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, Series 2005-R11, is a creditor with an interest in the subject property. CP 64-65

On June 16, 2010, the Bank moved for summary judgment pursuant to CR 56 on the grounds that: (1) as a result of the bankruptcy, the claims asserted by Clinton belonged to the bankruptcy estate, and thus Clinton lacked standing to pursue them on her own; (2) to the extent claims existed, the U.S. District Court had exclusive *in rem* jurisdiction; and (3) Ryanscrest Trust had no cause of action as to the claims asserted in the Complaint. CP 13-19.

Despite having named Deutsche Bank as a party and voluntarily filed for bankruptcy during the pendency of the trial court action, Clinton attempted to evade dismissal of their claims through summary judgment on the primary bases that (1) Deutsche Bank has no standing; and (2) the bankruptcy stay prohibited the trial court from hearing the motion. CP 74. Clinton's defenses to summary judgment were contradicted by the evidence before the trial court, and completely unsupported in law. As such, the trial court's grant of summary judgment and dismissal of the Complaint was proper and should be affirmed.

II. COUNTERSTATEMENT OF ISSUES

The following issues pertain to Clinton's assignments of error:

1. Under Civil Rule 56(c), did the trial court properly grant the Bank's motion for summary judgment when 11 U.S.C. § 541(a)

provides that all legal or equitable interests of a debtor become property of the bankruptcy estate

2. Under Civil Rule 56(c), did the trial court properly grant the Bank's motion for summary judgment when RCW 58.17.210 provides that a purchaser may seek rescission of a sale that violates RCW 58.17?

3. Under Civil Rule 56(c), did the trial court properly grant the Bank's motion for summary judgment when CR 15(c) allows for amendment to change a party with relation back to the original Complaint?

4. Under Civil Rule 56(c), did the trial court properly grant the Bank's motion for summary judgment when CR 5(a) requires that motions be served on all parties in a case?

III. STATEMENT OF THE CASE

A. The Allegations in the Complaint

Clinton filed this case on April 22, 2009, seeking to rescind the purchase of real property located in Pierce County, Washington. CP 2-3.

The Complaint alleged that Ms. Clinton purchased from Defendant

Nickless real property legally described as:

North 132.8 fee of the South 750.72 feet of
Government Lot 4 of Section 6, Township
21 North, Range 1 East of the Willamette
Meridian.

CP 1. The property is commonly known as 9316 Glencove Road, Gig Harbor, WA (“9316 Glencove” or “the property”). CP 24.

Clinton alleged that she purchased the property on November 1, 2005, recorded under Pierce County Auditor No. 200511011618. CP 191. Clinton subsequently filed a First Amended Complaint on July 30, 2010, alleging that, after purchase, Clinton transferred 9316 Glencove from herself as an individual, to herself as Trustee for Ryanscrest Trust. CP 91. The Complaint and First Amended Complaint (collectively “Complaint”) asked the Court to rescind the sale because 9316 Glencove purportedly had not been properly subdivided prior to the sale. CP 2, 92.

The Complaint also named “Ameriquest Mortgage Securities, Inc., Ameriquest Mortgage Company, and Deutsche Bank National Trust Company” as defendants on the basis that they “have an interest in the property as recorded liens upon the property.” CP 1-2. On June 2, 2009, Perkins Coie filed a Notice of Appearance on behalf of Deutsche Bank National Trust. CP 7-9. Deutsche Bank then filed an Answer to the Complaint on July 15, 2009, which bore the Bank’s proper name as “Deutsche Bank National Trust Company.” CP 208. Additionally, in response to a motion brought by Clinton for default order and judgment, the Bank filed an opposition, informing of its interest in the property. CP 195-196. Specifically, the Bank identified the proper party with an

interest as Deutsche Bank National Trust Company, as trustee for Trustee in trust for the benefit of the Certificateholders for Ameriquest Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, Series 2005-R11, which is the entity identified in the liens filed with the Official Records that is referenced in Clinton's Amended Complaint. *See* CP 13, 64-65.

B. Clinton's Chapter 7 Bankruptcies

1. Ms. Clinton's Bankruptcy

On July 10, 2009, Ms. Clinton filed a voluntary petition for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Western District of Washington under case number 09-44962-PHB. CP 32. On August 24, 2009, Ms. Clinton filed a Notice of Bankruptcy Filing, notifying the Court that she had filed for bankruptcy in the United States Bankruptcy Court for the Western District of Washington on July 10, 2009. CP 12. On November 18, 2009, the Bankruptcy Court converted Ms. Clinton's Chapter 11 bankruptcy to a Chapter 7. CP 39.

In response to the bankruptcy, the U.S. Trustee brought an adversary proceeding against Clinton in the U.S. Bankruptcy Court for the Western District of Washington on March 8, 2010, under case number 10-04057. CP 51. The Adversary Complaint alleges, *inter alia*, that Clinton transferred 9316 Glencove with the "intent to defraud a creditor or the

Trustee;" failed to preserve necessary financial information; and
"knowingly and fraudulently made false oaths on the Initial and Amended
Schedules relating to material facts." CP 61-62.

On April 7, 2010, the Bank moved the Bankruptcy Court for relief
from the automatic stay. CP 43-44. Clinton responded to the Bank's
motion on May 5, 2010. CP 46. On June 9, 2010, the Bankruptcy Court
granted the Bank's motion for relief from stay, allowing the Bank to
proceed with enforcing its security interest in 9316 Glencove. CP 64-65.

2. Ryanscrest Trust Bankruptcy

On October 29, 2010, Ryanscrest Trust filed a voluntary petition
for Chapter 7 bankruptcy in the United States Bankruptcy Court for the
Western District of Washington under case number 10-489-79-PBS. CP
166. A Notice of Filing of Bankruptcy Motion regarding this bankruptcy
was filed in the trial court matter against Nickless, et al., on November 1,
2010. CP 164-65.

C. Pierce County Prosecutor's Action

Prior to the filing of Clinton's Complaint, 9316 Glencove was the
subject of a "Complaint to Prevent and Abate Nuisance and to Impose
Special Assessment Senior Lien" brought by the Pierce County Deputy
Prosecuting Attorney. CP 66-71. The Complaint named Ms. Clinton,
Ryanscrest Trust, Ameriquet Mortgage Company, and Deutsche Bank

National Trust Company as defendants all having interest in the property.
CP 67.

D. Summary Judgment Proceedings

On June 16, 2010, the Bank moved for summary judgment pursuant to CR 56. CP 13-19. The Bank's motion was based on three grounds: (1) Clinton, as a debtor in a pending Chapter 7 bankruptcy proceeding, lacked standing to bring the lawsuit; (2) the Complaint lacked any claims asserted by Plaintiff Ryanscrest Trust; and (3) the Court lacked jurisdiction to determine matters affecting disposition of the subject property because it was part of the bankruptcy estate. *Id.*

In response, Clinton filed a Motion to Strike, Declaration, and Alternate Motion to Continue on July 19, 2010. CP 74. Clinton's motion asked the court to strike the Bank's motion based on three grounds. First, Clinton argued that no motion was ever filed or served by the Bank. CP 76. Second, Clinton argued that the bankruptcy stay prohibited the trial court from hearing the Bank's Motion for Summary Judgment. CP 75. Finally, Clinton argued that the Complaint named "Deutche [sic] Bank National Trust" as a defendant; thus Deutsche Bank National Trust had no standing to intervene in the matter. *Id.*

A hearing was held before the Court on August 13, 2010 on the Bank's Motion for Summary Judgment. CP 267-68. The Bank was

represented by counsel at the hearing and counsel for Nickless appeared to join in support of the Bank's motion. CP 110-113. Clinton, however, failed to appear. CP 268. After reviewing the record and hearing argument, the Court granted the Bank's motion and dismissed the Complaint with prejudice. CP 97-98.

Clinton obtained counsel and, after Clinton complained that she did not receive notice of the summary judgment hearing, counsel for the Bank agreed to a CR 60 order vacating the Court's Order granting summary judgment, and rescheduling argument on the Bank's Motion for Summary Judgment to November 5, 2010. CP 160-63. On November 5, 2010, the Court held a hearing on the Bank's Motion for Summary Judgment. CP 181. The Bank and Clinton were both represented by counsel at this hearing. CP 182. After reviewing the record and pleadings filed in connection with the motion, the Court granted summary judgment and dismissed the Complaint with prejudice. CP 181-82. On December 5, 2010, Clinton filed a Notice of Appeal, seeking review of the Court's Order Granting Summary Judgment. CP 183-85.

IV. ARGUMENT

A. Standard of Review

Under Civil Rule 56, a motion for summary judgment will be granted "if the pleadings ... together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). The standard of review on appeal from an order granting a motion for summary judgment is de novo review of the precise record considered by the trial court.

LeBeuf v. Atkins, 93 Wn.2d 34, 36, 604 P.2d 1287 (1980). When reviewing an order of summary judgment, the appellate court considers and performs the same inquiry as the trial court. *Ames v. Fircrest*, 71 Wn. App. 284, 289, 857 P.2d 1083 (1993).

Here, the trial court properly granted the Bank’s Motion for Summary Judgment and dismissed the Complaint based on Appellants’ lack of standing, the court’s lack of subject matter jurisdiction over the claims, and Ryanscrest Trust’s lack of interest in Clinton’s claims regarding the purchase of 9316 Glencove. Furthermore, Appellants’ claims of error regarding Deutsche Bank’s standing and requirement that the Bankruptcy Trustee receive notice of the Motion for Summary Judgment fail as a matter of law.

B. Summary Judgment Was Proper Because Ms. Clinton and Ryanscrest Trust Are Debtors in Bankruptcy

1. Appellants Lacked Standing to Pursue Claims Regarding Property Involved in Bankruptcy

The trial court properly granted the Bank’s summary judgment motion because Ms. Clinton and Ryanscrest Trust’s claims were assets of

their respective bankruptcy estates. Accordingly, they lacked standing to pursue claims that did not belong to them.

When a bankruptcy is filed, “all legal or equitable interests of the debtor in property as of the commencement of the case” become property of the bankruptcy estate. 11 U.S.C. § 541(a)(1). Complaints and causes of action are among the legal or equitable interests that become property of the bankruptcy estate under 11 U.S.C. § 541. *Linklater v. Johnson*, 53 Wn. App. 567, 570, 768 P.2d 1020 (1989) (citing *In re Smith*, 640 F.2d 888, 892 (7th Cir.1981)); 4 W. Collier, § 541.10[1], at 541-63). Any claim asserted by Ms. Clinton or Ryanscrest Trust, debtors in Chapter 7 cases, belongs to the estate for each respective bankruptcy; therefore, they lacked standing to bring such claims on their own. *Linklater*, 53 Wn. App. at 570; see also *Turner v. Cook*, 362 F.3d 1219, 1225-26 (9th Cir. 2004) (“When [plaintiff] declared bankruptcy, all the ‘legal or equitable interests’ he had in his property became the property of the bankruptcy estate and are represented by the bankruptcy trustee.”).

Appellants’ argument, regarding whether a dismissal based on insufficiency of evidence should be with prejudice or without, is misguided. A lack of standing renders the court powerless to even resolve a case on the merits, leaving dismissal of the case its only option. *Ullery v. Fulleton*, No. 28726-2-III, 2011 WL 2802911 at *4 (Wash. Ct. App.

July 19, 2011); *see also Skagit Surveyors and Engineers, LLC v Friends of Skagit County*, 135 Wn.2d 542, 556-57, 958 P.2d 962 (1998) (Talmadge, J., dissenting) (holding that a lack of standing is tantamount to a lack of subject matter jurisdiction). Furthermore, Civil Rule 17(a) allows for the dismissal of cases that are not prosecuted in the name of the real party in interest if a reasonable time has been allowed after an objection to standing for ratification of the action by, or joinder of, the real party in interest. Here, the Bank timely objected to Clinton's standing to bring the cause of action set forth in the Complaint. CP 16-17. No action was taken by Clinton to have the bankruptcy trustee joined as a party to, or ratify, the case. Accordingly, the trial court properly dismissed the Complaint.²

2. The Trial Court Lacked Jurisdiction to Determine Matters Regarding 9316 Glencove

Despite Clinton's lack of standing, the trial court properly dismissed the Complaint because it also lacked jurisdiction to determine matters related to 9316 Glencove. "The district court in which the bankruptcy case is commenced obtains exclusive in rem jurisdiction over all of the property in the estate." *Hong Kong and Shanghai Banking Corp., Ltd. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir.1998).

² Even if the court had granted summary judgment based on Clinton's inability to provide evidential support of her claims, dismissal with prejudice is proper as Clinton's claims regarded rescission of a contract. *See Graff v. Geisel*, 39 Wn.2d 131, 138, 234 P.2d 884 (1951) ("In an equity action, on the other hand, it is proper to dismiss with prejudice.").

Because Clinton's cause of action became the property of the bankruptcy estate, *see supra*, the trial court lacked jurisdiction to determine the matter.

C. Summary Judgment Was Proper as to Ryanscrest Trust Because It Was Not a Party to the Purchase of 9316 Glencove

The Complaint alleges a cause of action for rescission of the purchase and sale of 9316 Glencove on the basis that it was never subdivided in violation of RCW 58.17. Specifically, RCW 58.17.210 provides that a *purchaser* may either recover damages incurred in conforming the property to the statute or, in the alternative, rescind the sale. The records show that Ms. Clinton, in her individual capacity, purchased 9316 Glencove from Nickless. CP 72. As discussed above, the doctrine of standing prohibits a person from litigating another party's rights. *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 138, 744 P.2d 1032, 750 P.2d 254 (1987). To the extent there are any claims regarding the sale of the property, they are solely that of Ms. Clinton (and now her bankruptcy estate)—the purchaser of 9316 Glencove—and not Ryanscrest Trust.

D. The Record Shows That the Bank Had Standing to Bring a Motion for Summary Judgment

Clinton argues the trial court erred in granting summary judgment because the Bank lacked standing to bring the motion. The record, however, indicates the very opposite. The Complaint, filed by Clinton,

clearly attempted to identify Deutsche Bank as a party, with specific referenced to recorded liens:

2. Ameriquest Mortgage Securities Inc., Ameriquest Mortgage Company, and Deutche [sic] Bank National Trust Company have an interest in the property as recorded liens upon the property identified and provided by Patrice Clinton.

CP 1. Deutsche Bank appeared in the matter and filed an Answer to the Complaint, as well as filed an opposition to Clinton's Motion for Default against Nickless in which it affirmatively asserted an interest in the property, as described in the liens filed with the Official Recorded. CP 7-9, 195-96, 208. Clinton's assertion that the Bank denied any interest in the property is a misstatement of the facts, and contradicts the Complaint. *See id.*

The liens referenced in the Complaint identify Deutsche Bank National Trust Company, as trustee for Trustee in trust for the benefit of the Certificateholders for Ameriquest Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, Series 2005-R11, as the entity with an interest in the 9316 Glencove. Accordingly, that entity responded to Clinton's Complaint.

Furthermore, in Ms. Clinton's Chapter 7 bankruptcy, the Bankruptcy Court determined Deutsche Bank National Trust Company, as Trustee in trust for the benefit of the Certificateholders for Ameriquest

Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, Series 2005-R11, is a creditor with an interest in the subject property. CP 64-65. In determining whether to grant the Bank's motion for relief from stay, the Bankruptcy Court necessarily determines whether the movant is a real party in interest, i.e. the party entitled to enforce the obligation sought to be enforced. *In re Jacobson*, 402 B.R. 359, 366-67 (Bankr.W.D.Wash., 2009).

Clinton attempts to allege the Bank lacks standing because only "Deutsche Bank National Trust" in its individual capacity and not "Deutsche Bank National Trust Company, as Trustee in trust for the benefit of the Certificateholders for Ameriquest Mortgage Securities Trust 2005-R11, Asset-Backed Pass-Through Certificates, Series 2005-R11" was named in the Complaint. Generally, the civil rules protect plaintiffs from defendants who attempt to elude litigation on the basis of misidentification. Civil Rule 15(c) allows for amendment to change a party with relation back to the date of the original complaint if (1) the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading; (2) the defendant received notice of the action such that he will not be prejudiced in maintaining his defense on the merits; (3) the defendant knew or should have known, but for the mistake in identifying the proper party, the action

would have been brought against him; and (4) the original omission of the party was not a result of inexcusable neglect. CR 15(c); *Teller v. APM Terminals Pacific, Ltd.*, 134 Wn. App. 696, 706, 142 P.2d 179 (2006). All elements are clearly met in this case. Where the law so clearly indicates a preference to have cases litigated by the real parties in interest, Clinton cannot rely on a technical misidentification of the Bank's name in the Complaint to raise a lack of standing issue. This is particularly so when the Complaint identifies, through reference to public documents, the proper defendant in the action.

E. The Trial Court Had Jurisdiction to Rule on the Motion for Summary Judgment

1. The Trial Court Had Jurisdiction to Dismiss the Action Irrespective of the Pending Bankruptcies

Clinton alleges that the trial court erred in hearing the Bank's Motion for Summary Judgment because the pending bankruptcies stayed the continuation of the trial court matter. Under 11 U.S.C. § 362(a), the filing of a bankruptcy petition operates as a stay of the commencement or continuation of a judicial action to recover a claim against a debtor or the debtor's property. However, dismissal of a case does not constitute a violation of the automatic stay if the court is "not required 'to consider other issues presented by or related to the underlying case.' " *O'Donnell v. Vencor Inc.*, 466 F.3d 1104, 1110 (9th Cir. 2006) (quoting *Dean v.*

Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995). Here, the Bank's Motion for Summary Judgment sought dismissal of the Complaint on Clinton's lack of standing and the trial court's lack of jurisdiction to determine matters relating to property of the bankruptcy estate. CP 13-19. As the Court did not have to consider the merits of the case in deciding to grant the motion, summary judgment was proper. Furthermore, the automatic stay does not prevent persons who a debtor has sued to protect their legal rights. *In re White*, 186 B.R. 700 (9th Cir. B.A.P. 1995). Because the case was brought by Clinton, the Bank did not violate the automatic stay in defending itself in the action and moving for summary judgment. The trial court had jurisdiction to grant summary judgment and dismiss the Complaint.

2. The Motion for Summary Judgment Was Properly Served on All Parties

Clinton's final argument is that, because the Bankruptcy Trustee is the real party in interest to the cause of action asserted in the Complaint, the Bank's Motion for Summary Judgment was improperly served because a copy was not served on the Trustee. This argument confuses the law. Civil Rule 5(a) requires all motions, other than ones which may be heard ex parte, be served upon each of the parties. Although Clinton's cause of action became the property of the bankruptcy estate, *see supra*, Clinton

never attempted to join the Trustee as a party to, or ratify, the action.

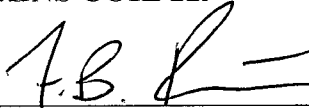
Because the Bankruptcy Trustee was not a party in the case, the Bank was not required to provide him with notice of the Motion for Summary Judgment. Clinton's argument has no merit.

V. CONCLUSION

For the reasons provided above, Deutsche Bank National Trust Company respectfully requests that this Court affirm the trial court's order of summary judgment.

Respectfully submitted this 16th day of August, 2011.

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CERTIFICATE OF SERVICE

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STATE OF WASHINGTON

I certify that on August 16, 2011, I caused to be served upon all parties, at the addresses stated below, via the method of service indicated, a true and correct copy of the following document:

**BRIEF OF RESPONDENT
DEUTSCHE BANK NATIONAL TRUST**

Patrice Clinton	<u>X</u>	Via hand delivery
9316 Glencove Road	<u> </u>	Via U.S. Mail, 1st Class, Postage Prepaid
Gig Harbor, WA 98329	<u> </u>	Via Overnight Delivery
	<u> </u>	Via Facsimile
<i>Pro Se Plaintiff</i>	<u> </u>	Via E-filing

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, this 16th day of August, 2011.


Frederick B. Rivera, WSBA #23008